

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

EVARISTO RODRIGUEZ,

Plaintiff,

DECISION AND ORDER

10-CV-6243L

v.

JAMES T. CONWAY, et al.,

Defendants.

This Court referred matters of pretrial discovery and the resolution of non-dispositive motions to United States Magistrate Judge Marian W. Payson pursuant to 28 U.S.C. § 636(b).

Pro se plaintiff Evaristo Rodriguez (“Rodriguez”) commenced this action in 2010 alleging that various employees of the Attica Correctional Facility violated his Eighth Amendment rights by acting with deliberate indifference to his serious medical needs. Rodriguez moved for leave to file a supplemental complaint naming two additional defendants; a motion for a physical examination of him and a motion to compel.

Magistrate Judge Payson issued a Report and Recommendation/Decision and Order (Dkt. #61). In that document, the Magistrate Judge recommended that this Court grant Rodriguez leave to supplement his complaint by alleging claims against another physician, James T. Evans, M.D., and physician’s assistant, Schunk. Magistrate Judge Payson discussed the applicable law and recommended that this Court grant Rodriguez leave to supplement his complaint to add allegations against Dr. Evans but deny the request to supplement as to physician’s assistant Schunk.

The parties were given notice of the time within which to appeal but no appeal has been filed by either Rodriguez or defendants. I have reviewed the Magistrate Judge’s Report and

Recommendation and agree with it and, therefore grant Rodriguez leave to supplement his complaint against Dr. James T. Evans but deny the request as to physician assistant Schunk.


The Magistrate Judge also denied Rodriguez's request to submit to a physical examination under FED. R. CIV. P. 35(a) and she also denied the motion to compel. No objection has been filed and, therefore I affirm in all respects the Magistrate Judge's decision on these matters.

CONCLUSION

Plaintiff's motion to supplement his complaint (Dkt. #20) as to physician assistant Schunk is denied. The motion for leave to file a supplemental complaint to add Dr. James T. Evans (Dkt. ##20, 21 is granted).

The appeal from Magistrate Judge Payson's Decision (Dkt. #61) denying plaintiff's request for a physical examination and denying the request to compel discovery is in all respects affirmed.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
October 12, 2011.